November 5, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kasey Kolassa, Recycling and Solid
Waste Services Manager
Public Works Department
Santa Cruz County
701 Ocean Street, Room 410
Santa Cruz, CA 95060

Kasey Kolassa, Recycling and Solid
Waste Services Manager
Public Works Department
Santa Cruz County
150 Rountree Lane
Watsonville, CA 95076

Kasey Kolassa, Recycling and Solid
Waste Services Manager
Public Works Department
Santa Cruz County
1231 Buena Vista Lane
Watsonville, CA 95076

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Mr. Kolassa:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at Santa Cruz County's ("the County") Buena Vista Landfill facility located at1231 Buena Vista Lane, Watsonville California ("the Facility"). The WDID number for the Facility is 3 44I001258. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Harkins Slough, Gallighan Slough, the Pajaro River, and the Monterey Bay. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, Kasey Kolassa, and the County of Santa Cruz shall hereinafter be collectively referred to as "the County."

This letter addresses the County's unlawful discharges of pollutants from the Facility to Harkins Slough and Gallighan Slough, both of which flow to the Pajaro River, which ultimately flows into Monterey Bay. The County is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit"). Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, the County and Kasey Kolassa are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the County and Kasey Kolassa under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

A. The Clean Water Act.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The General Permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). "Navigable waters" means "the waters of the United States" and includes, for example, traditionally navigable waters and tributaries to such waters. U.S.C. § 1362(7); 33 C.F.R. § 328.333 (a)(1)-(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters

adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

CSPA is informed and believes, and thereupon alleges, that the County has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the General Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since at least April 27, 1992. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the Act since November 5, 2009.

B. The County's Facility, Water Quality Standards, and EPA Benchmarks

The Facility is located at 1231 Buena Vista Lane in the city of Watsonville and discharges indirectly to the Pajaro River. The Facility falls under Standard Industrial Classification ("SIC") Code 4953 ("Hazardous Waste Treatment Storage or Disposal"). Accordingly the County must analyze storm water samples for Total Suspended Solids ("TSS"), pH, Specific Conductance ("SC"), and Total Organic Carbon ("TOC") or Oil and Grease ("O&G"), in addition to Ammonia (NH3), Magnesium (Mg), Biological Oxygen Demand ("BOD"), Chemical Oxygen Demand (COD), Arsenic (As), Cadmium (Cd), Cyanide (Cn) Lead (Pb), Mercury (Hg), Selenium (Se), and Silver (Ag). *See* General Permit, Section B(5)(c)(i) - (iii) and at Table D, Sections M and N.

The County submitted a Notice of Intent ("NOI") to discharge under the General Permit in 1992. CSPA's investigations into the industrial activities at the County's approximately 112-acre Facility indicate that the Facility is used to process and store 350 tons of refuse daily, including: waste paper, plastic, metals, and glass; waste oil; scrap metals including aluminum and steel; hazardous waste; waste oils and greases; treated wood wastes; agricultural waste; and electronic waste including scrap household electronic products, computers and peripherals, audio and video components, and telephone equipment. The Facility also stores and processes general industrial and household hazardous waste, including: fluorescent light bulbs, ballasts, paints, stains, solvents, pesticides, herbicides, automotive products, cleaning products, aerosols and pool care chemicals. The County collects and discharges storm water from the Facility through at least four (4) discharge points into Gallighan Slough and Harkins Slough, which flow to the Pajaro River, which ultimately flows into Monterey Bay. The Pajaro River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for the Pajaro River and Monterey Bay in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean

Waters of California" ("Ocean Plan"). The Ocean Plan "sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives." *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels ("MCLs") for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L; Arsenic - 0.05 mg/L; Lead - 0.05 mg/L; and Mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for Mercury - 0.002 mg/L; Lead – 0.015 mg/L; Chromium – 0.1 mg/L; and Copper – 1.3 mg/L.

The EPA has also issued a recommended water quality criterion for Aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. *See* http://www.epa.gov/safewater/ mcl.html. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule ("CTR"), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); Chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); Copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and Lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.[1] Discharges of pollutants into a surface water body may be deemed a "contribution" to an exceedance of the CTR, an applicable water quality

[1] *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was "subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead" under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by the County: Total Suspended Solids – 100 mg/L;; pH – 6.0 – 9.0 s.u; Iron – 1.0 mg/L,. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm and Total Organic Carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: Oil & Grease – 15.0 mg/L, Ammonia – 19 mg/L, Magnesium – 0.0636 mg/L, Biological Oxygen Demand – 30 mg/L, Chemical Oxygen Demand – 120 mg/L, Arsenic – 0.16854 mg/L, Cadmium – 0.0159 mg/L, Cyanide – 0.0636 mg/L, Lead – 0.0816 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

II. The County's Violations of the General Permit.

Based on its review of available public documents, CSPA is informed and believes that the County is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

A. The County Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).

The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm

water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

The County has discharged and continues to discharge storm water with unacceptable pH levels and unacceptable levels of Total Suspended Solids, Iron, and Specific Conductance in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. The County's Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 1	TSS	223 mg/L	100 mg/L
4/12/10	Discharge Point 2	TSS	106 mg/L	100 mg/L
4/12/10	Discharge Point 3	TSS	1260 mg/L	100 mg/L
12/14/10	Discharge Point 1	TSS	863 mg/L	100 mg/L

12/14/10	Discharge Point 2	TSS	414 mg/L	100 mg/L
2/14/11	Discharge Point 1	TSS	1920 mg/L	100 mg/L
2/29/12	Discharge Point 1	TSS	1210 mg/L	100 mg/L
2/29/12	Discharge Point 2	TSS	876 mg/L	100 mg/L
2/29/12	Discharge Point 3	TSS	134 mg/L	100 mg/L
10/24/12	Discharge Point 2	TSS	205 mg/L	100 mg/L
11/28/12	Discharge Point 1	TSS	149 mg/L	100 mg/L
11/28/12	Discharge Point 2	TSS	2010 mg/L	100 mg/L
11/28/12	Discharge Point 3	TSS	413 mg/L	100 mg/L
2/6/14	Discharge Point 1	TSS	372 mg/L	100 mg/L
2/6/14	Discharge Point 3	TSS	1350 mg/L	100 mg/L
2/26/14	Discharge Point 1	TSS	202 mg/L	100 mg/L
2/26/14	Discharge Point 2	TSS	1540 mg/L	100 mg/L
3/26/14	Discharge Point 2	TSS	1430 mg/L	100 mg/L
2/28/14	Discharge Point 3	TSS	346 mg/L	100 mg/L

2. Discharge of Storm Water Containing pH at Levels Outside Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
12/14/10	Discharge Point 1	pH	5.96 s.u.	6.0-9.0 s.u.
2/6/14	Discharge Point 3	pH	9.05 s.u.	6.0-9.0 s.u.

3. Discharge of Storm Water Containing Iron (Fe) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 1	Fe	10.3 mg/L	1 mg/L
4/12/10	Discharge Point 2	Fe	5.68 mg/L	1 mg/L
4/12/10	Discharge Point 3	Fe	156 mg/L	1 mg/L
12/14/10	Discharge Point 1	Fe	22.9 mg/L	1 mg/L
12/14/10	Discharge Point 2	Fe	1.76 mg/L	1 mg/L
12/14/10	Discharge Point 3	Fe	21.4 mg/L	1 mg/L
2/14/11	Discharge Point 1	Fe	68.2 mg/L	1 mg/L
2/14/11	Discharge Point 2	Fe	2.85 mg/L	1 mg/L
2/14/11	Discharge Point 3	Fe	5.65 mg/L	1 mg/L
2/29/12	Discharge Point 1	Fe	36.8 mg/L	1 mg/L
2/29/12	Discharge Point 2	Fe	36.1 mg/L	1 mg/L
2/29/12	Discharge Point 3	Fe	3.17 mg/L	1 mg/L
10/24/12	Discharge Point 1	Fe	2.9 mg/L	1 mg/L
10/24/12	Discharge Point 2	Fe	7.98 mg/L	1 mg/L
10/24/12	Discharge Point 3	Fe	1.25 mg/L	1 mg/L

11/28/12	Discharge Point 1	Fe	12.5 mg/L	1 mg/L
11/28/12	Discharge Point 2	Fe	67.4 mg/L	1 mg/L
11/28/12	Discharge Point 3	Fe	19.8 mg/L	1 mg/L
2/6/14	Discharge Point 1	Fe	12.3 mg/L	1 mg/L
2/6/14	Discharge Point 3	Fe	54.8 mg/L	1 mg/L
2/26/14	Discharge Point 1	Fe	8.55 mg/L	1 mg/L
2/26/14	Discharge Point 2	Fe	25.5 mg/L	1 mg/L
3/26/14	Discharge Point 2	Fe	42.8 mg/L	1 mg/L
3/26/14	Discharge Point 3	Fe	10.3 mg/L	1 mg/L

4. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/12/10	Discharge Point 1	SC	350 µmhos/cm	200 µmhos/cm
4/12/10	Discharge Point 2	SC	388 µmhos/cm	200 µmhos/cm
4/12/10	Discharge Point 3	SC	582 µmhos/cm	200 µmhos/cm
12/14/10	Discharge Point 1	SC	433 µmhos/cm	200 µmhos/cm
12/14/10	Discharge Point 2	SC	692 µmhos/cm	200 µmhos/cm
12/14/10	Discharge Point 3	SC	775 µmhos/cm	200 µmhos/cm

2/14/11	Discharge Point 1	SC	242 µmhos/cm	200 µmhos/cm
2/14/11	Discharge Point 2	SC	585 µmhos/cm	200 µmhos/cm
2/14/11	Discharge Point 3	SC	245 µmhos/cm	200 µmhos/cm
2/29/12	Discharge Point 1	SC	1220 µmhos/cm	200 µmhos/cm
2/29/12	Discharge Point 2	SC	744 µmhos/cm	200 µmhos/cm
2/29/12	Discharge Point 3	SC	1458 µmhos/cm	200 µmhos/cm
10/24/12	Discharge Point 1	SC	552 µmhos/cm	200 µmhos/cm
10/24/12	Discharge Point 2	SC	739 µmhos/cm	200 µmhos/cm
10/24/12	Discharge Point 3	SC	1195 µmhos/cm	200 µmhos/cm
11/28/12	Discharge Point 2	SC	268 µmhos/cm	200 µmhos/cm

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's investigations, including a review of the County's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicates that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, and Specific Conductance in violation of Effluent Limitation B(3) of the General Permit. The County was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, the County is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above samples may also constitute violations of Receiving Water Limitation C(2) of the General Permit, with respect to the discharge of parameters for which the County has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits. The above samples also establish violations of Receiving Water Limitation C(1) of the General Permit, because such discharges adversely impact human health or the environment, and Discharge Prohibition A (2) because the discharges cause or threaten to cause pollution, contamination or nuisance.

CSPA is informed and believes that the County has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least November 5, 2009. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since November 5, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that the County has discharged storm water containing impermissible levels of Total Suspended Solids, pH, Iron, and Specific Conductance in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 5, 2009.

B. The County Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled."

Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, pH, Specific Conductance, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the General Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2."

Based on their investigations, CSPA is informed and believes that the County has failed to develop and implement an adequate Monitoring & Reporting Plan. As an initial

matter, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during at least four of the past five Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past five Wet Seasons.

Moreover, the County has failed to analyze storm water samples for all required constituents. As a facility enrolled under SIC Code 4953 the County must also analyze samples for Ammonia, Magnesium, Biological Oxygen Demand, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium and Silver. *See* General Permit, Section B(5)(c)(ii) – (iii) and Table D, Section N. It has failed to do so on every occasion that it sampled since November 5, 2009. Finally, based on its review of publicly available documents, CSPA is informed and believes that the County has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Aluminum – 0.75 mg/L ; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since November 5, 2009. These violations are set forth in greater detail below.

1. The County Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Four of The Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during four of the past five Wet Seasons, as required by the General Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

The County reported in four of the past five Wet Seasons (i.e., 2010-2011; 2011-2012; 2012-2013; 2013-2014 Wet Seasons), that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, the County reported in its 2010-2011 Annual Report that it sampled the first qualifying storm event of the Wet Season, but the County's first sample is from December 14, 2010. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2010-2011 Wet Season occurred as early as October 17, 2009, when 0.17" of

rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. The County Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in the County's Annual Reports for four of the last five Wet Seasons, CSPA is informed and believes that the County has failed to comply with this requirement of the General Permit.

Specifically, the County failed to conduct monthly visual observations of discharges from qualifying storm events for all months during four of the past five Wet Seasons as required by the General Permit. The County either completely failed to document visual observations at all, or documented its visual observations of storm water that discharged during non-qualifying storm events during four of the past five Wet Seasons. However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that the County could have observed.

For example, the County reported in its 2011-2012 Annual Report that, except for the month of February, it did not observe a discharge or there was no rain during the entire Wet Season. Based on its investigation of publicly available rainfall data, CSPA is informed and believes that this could not be possible because there were numerous significant rainfall events during those months. *See* Attachment A. the County's failure to conduct this required monthly Wet Season visual monitoring extends back to at least November 5, 2009, and has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. The County's Failure to Analyze Storm Water Samples for All Required Constituents.

The County has failed to analyze storm water samples for all required constituents. Specifically, it has failed to ever analyze samples for Ammonia, Magnesium, Biological Oxygen Demand, Chemical Oxygen Demand, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, and Silver, as required for facilities enrolled under SIC Codes 4953. *See* General Permit, Section B(5)(c)(iii) and Table D, Section N. It has failed to do so on every occasion that it sampled since November 5, 2009. In addition, CSPA is informed and believes that the County has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility, including: Aluminum -- 0.75 mg/L; Zinc – 0.117 mg/L; Nickel – 1.417 mg/L; and Magnesium – 0.0636 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the General Permit and Clean Water Act. Accordingly, the County is subject to penalties for these violations of the General Permit and the Act since November 5, 2009.

C. The County Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, pH, Iron, Specific Conductance, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, the County must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum the County must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. The County has failed to adequately implement such measures.

The County was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the County has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. The County is subject to penalties for violations of the General Permit and the Act occurring since November 5, 2009.

D. The County Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that the County has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The County has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, the County has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. The County is subject to penalties for violations of the General Permit and the Act occurring since November 5, 2009.

E. The County Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the General Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, the County is discharging elevated levels of Total Suspended Solids, pH, Iron, Specific Conductance, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, the County was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the County was aware of high levels of these pollutants long before November 5, 2009. The County has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since November 5, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The County is subject to penalties for violations of the General Permit and the Act occurring since November 5, 2009.

F. The County Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigations indicate that the County has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the County reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect.

Further, the County failed to sample from qualifying storm events in two out of last five Wet Seasons in violation of the General Permit. The County also failed to comply with the monthly visual observations of storm water discharges requirement for five of the past five Annual Reports filed for the Facility. For example, in the 2010-2011 Annual Report, the County did not observe discharge from any qualifying storm events except in the month of February, even though there were numerous qualifying storm events to observe.

These are but a few examples of how the County has failed to file completely true and accurate reports. As indicated above, the County has failed to comply with the General Permit and the Act consistently for the past five years; therefore, the County has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time the County submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. The County's failure to submit true and complete reports constitutes continuous and ongoing violations of the General Permit and the Act. The County is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since November 5, 2009.

IV. Persons Responsible for the Violations.

CSPA puts the County and Kasey Kolassa on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts the County and Kasey Kolassa on formal notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067

VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

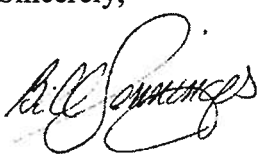
Andrew L. Packard
Megan Truxillo
John J. Prager
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Email: Andrew@PackardLawOffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects the County and Kasey Kolassa to a penalty of up to $37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the County and Kasey Kolassa and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

ATTACHMENT A
Notice of Intent to File Suit, Santa Cruz County
Significant Rain Events,* November 5, 2009 – November 5, 2014

December 7, 2009
December 11, 2009
December 12, 2009
December 13, 2009
December 26, 2009
December 27, 2009
January 12, 2010
January 13, 2010
January 17, 2010
January 18, 2010
January 19, 2010
January 20, 2010
January 22, 2010
January 26, 2010
January 29, 2010
February 4, 2010
February 6, 2010
February 9, 2010
February 21, 2010
February 23, 2010
February 24, 2010
February 26, 2010
February 27, 2010
March 2, 2010
March 3, 2010
March 10, 2010
March 12, 2010
April 2, 2010
April 4, 2010
April 11, 2010
April 12, 2010
April 20, 2010
April 27, 2010
April 28, 2010
May 10, 2010
October 17, 2010
October 23, 2010
October 24, 2010
October 30, 2010
November 7, 2010
November 19, 2010
November 20, 2010
November 21, 2010
November 23, 2010
November 27, 2010
December 5, 2010
December 17, 2010
December 18, 2010
December 19, 2010
December 25, 2010
December 28, 2010
December 29, 2010
January 1, 2011
January 2, 2011
January 30, 2011
February 16, 2011
February 17, 2011
February 18, 2011
February 19, 2011
February 25, 2011
March 13, 2011
March 14, 2011
March 15, 2011
March 16, 2011
March 18, 2011
March 19, 2011
March 20, 2011
March 21, 2011
March 22, 2011
March 23, 2011
March 24, 2011
March 25, 2011
March 26, 2011
April 7, 2011
May 14, 2011
May 15, 2011
May 16, 2011
May 17, 2011
May 25, 2011
May 28, 2011
June 4, 2011
June 28, 2011
October 3, 2011
October 4, 2011
October 5, 2011
November 5, 2011
November 11, 2011
November 19, 2011
November 20, 2011
January 20, 2012
January 21, 2012
January 22, 2012
January 23, 2012
February 7, 2012
February 13, 2012
February 29, 2012
March 1, 2012
March 13, 2012
March 14, 2012
March 15, 2012
March 16, 2012
March 17, 2012
March 24, 2012
March 25, 2012
March 27, 2012
March 31, 2012
April 10, 2012
April 12, 2012
April 13, 2012
April 25, 2012
April 26, 2012
June 4, 2012
October 22, 2012
November 1, 2012
November 8, 2012
November 9, 2012
November 16, 2012
November 17, 2012
November 18, 2012
November 21, 2012
November 28, 2012
November 30, 2012
December 1, 2012
December 2, 2012
December 5, 2012
December 12, 2012
December 15, 2012
December 17, 2012
December 22, 2012
December 23, 2012
December 25, 2012
December 26, 2012
December 29, 2012
January 5, 2013
January 6, 2013
February 19, 2013
March 6, 2013
March 7, 2013
March 31, 2013
April 1, 2013
April 4, 2013
April 7, 2013
October 29, 2013
November 19, 2013
November 20, 2013
December 7, 2013
February 2, 2014
February 6, 2014
February 7, 2014
February 8, 2014
February 9, 2014
February 26, 2014
February 28, 2014
March 1, 2014
March 6, 2014
March 26, 2014
March 29, 2014
March 31, 2014
April 1, 2014
April 25, 2014
September 18, 2014
September 25, 2014
October 25, 2014
October 31, 2014

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.